

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: BETH BARTOLOMUCCI

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No. 12-EEC-009

Exemption from Prohibitions
In Section 50-13 of the
Illinois Procurement Code

DECISION

This cause is before the Executive Ethics Commission ("Commission") on requests for exemption from the prohibitions contained in Section 50-13 of the Illinois Procurement Code filed by four Chief Procurement Officers.

FINDINGS OF FACT

1. On March 20, 2012, the Chief Procurement Officer for General Services filed a request seeking an exemption pursuant to Section 50-20 of the Illinois Procurement Code (30 ILCS 500/50-20) from the prohibitions of Section 50-13 of the Illinois Procurement Code (30 ILCS 500/50-13) for Beth Bartolomucci, an employee of the Illinois State Police.
2. This request was joined by the Chief Procurement Officers ("CPO" or "CPOs") for Higher Education, for the Illinois Department of Transportation, and for the Capital Development Board.
3. The Executive Ethics Commission ("Commission") conducted a public hearing on the Chief Procurement Officer's request for an exemption on April 11, 2012 in Room 349C of the William Stratton Building in Springfield, Illinois. The Executive Director, Chad D. Fornoff, served as the Administrative Law Judge.
4. Notice of the date, time and location of the hearing were published in the on-line bulletins and on the Commission's web site at least fourteen (14) days prior to hearing.
5. At the hearing, the Chief Procurement Officers presented their combined request for exemption from the Commission. Hanson Professional Services, Inc. ("Hanson") was represented by Charles R. Schmadeke.
6. Beth Bartolomucci has been an employee of the Illinois State Police ("ISP") since 1997. Her duties relate to computer programming and she currently holds the position of Public Service Administrator (Option #3).

7. On February 1, 2012, Beth Bartolomucci received a raise pursuant to the provisions of her collective bargaining agreement relating to a general salary increase and a longevity increase. These increases place her present annual salary at \$110,148.
8. Mrs. Bartolomucci's salary of \$110,148 is more than 60% of the Illinois Governor's annual salary of \$177,412.
9. Mrs. Bartolomucci's husband, Thomas Bartolomucci, Jr., owns \$183,163.50 in Hanson stock. He also has an ownership interest of 0.99% of Hanson.
10. Mr. Bartolomucci's stock ownership includes the opportunity to receive distributable income annually as a dividend. An affidavit, provided by John Coombe, Chief Operating Officer of Hanson, see exhibit 10, identifies the dividend amount Mr. Bartolomucci received as \$3,985 based on a 2011 valuation of Hanson stock. Mr. Bartolomucci is also entitled to a distribution from the Hanson employee stock ownership plan, and that amount for 2011 was estimated by Hanson to be \$2,800.
11. Hanson has a \$22 million contract pending with the Illinois Toll Highway Authority ("Authority") as well as approximately \$20 million in existing contracts with multiple other agencies.
12. CPO for Higher Education, Ben Bagby, has identified seven contracts that are presently held by State universities with Hanson. These contracts are identified in exhibit 7 attached to this decision.
13. CPO for General Services, Matt Brown, has identified eight contracts that are presently held by General Service agencies with Hanson. These contracts are identified in exhibit 4 attached to this decision.
14. CPO for the Illinois Department of Transportation ("IDOT")--Construction, William Grunloh, has identified 17 contracts that are presently held by IDOT with Hanson. These contracts are identified in exhibit 6 attached to this decision.
15. CPO for the Illinois Capital Development Board ("CDB"), Fredrick Hahn, has identified six contracts that are presently held by CDB with Hanson. These contracts are identified in exhibit 5 attached to this decision.
16. At the April 11, 2012 hearing, Beth Bartolomucci testified that she has been employed by the State of Illinois since 1997 and that her job responsibilities focus on computer programming related to the ISP's legacy computer systems. She testified that she was not asked by anyone, including her husband or anyone from Hanson (or elsewhere) to assist with the award of any State contract. She is not familiar with either the pending Hanson contract with the Authority or with any of the existing State contracts for the any of the CPOs involved in this matter.

17. At hearing, the four CPOs testified that in their judgment they believed that the public interest in keeping Mrs. Bartolomucci in State service outweighed the public policy of Section 50-13. All four testified that there was no evidence that Mrs. Bartolomucci, in the position at the ISP, had any influence over the award of the contracts Hanson has with the State. In addition, all four testified regarding the present and pending contracts Hanson has with the State and the impact a failure to secure an exemption would have on the State business subject of those contracts.
18. At hearing, CPO Ben Bagby testified that voiding the contracts would be very disruptive and involve a cost to restart the bidding process and involve lost time. CPO Fred Hahn testified that based upon his experience at the CDB, it was extremely difficult to replace an architect or engineering firm and maintain the risk of the warranties, insurance and liabilities that go with a contract. CPO Matt Brown testified that if the State could not proceed on the present contracts, there would be a disruption of services, subsequently causing additional costs for finding replacement contractors. Mr. Brown further testified that he had never run across anything that would indicate that Hanson engaged in anything improper with regard to procurement. CPO William Grunloh testified that the contracts in question were awarded through a qualifications-based selection process and Beth Bartolomucci's position with the ISP does not appear to have had any effect on the procurement process.
19. At hearing, Thomas Bartolomucci, Jr. testified that he has worked for Hanson since 1983 and is currently a Vice President in the Hanson's Springfield Office and serves in the position of Manager of Project Delivery Services. Mr. Bartolomucci has invested in Hanson stock over time as part of his retirement savings, the current value of which is \$183,163.50. Mr. Bartolomucci states that over the course of his employment with Hanson he has only worked on one project for the ISP and his wife had absolutely no involvement in the award or administration of that project. Mr. Bartolomucci states that he understands that his wife's employment at the ISP does not cause her to be in a position to influence the award or administration of any contracts to Hanson. Mr. Bartolomucci states that he has never, and would never seek his wife's help regarding the State's award or administration of any State contract.
20. At that hearing, Sergio Pecori testified that in 1999 he was promoted to President of Hanson and that he has served in that capacity since that time. Mr. Pecori testified that Hanson is a national employee-owned consulting firm providing engineering, architectural, planning and allied services in both the public and private sectors. Mr. Pecori testified that Hanson encourages its employees to invest in ownership of Hanson and that Mr. Bartolomucci has done so, accumulating a less than one percent ownership interest in Hanson. Mr. Pecori testified that he has never asked either of the Bartolomucci's for assistance acquiring State contracts, nor is he aware of anyone else in the firm making such a request.

CONCLUSIONS OF LAW

1. The Executive Ethics Commission has jurisdiction over this matter pursuant to Section 50-20 of the Illinois Procurement Code. (30 ILCS 500/50-20).
2. Section 50-13 of the Illinois Procurement Code provides in two parts:
 - (a) Prohibition. It is unlawful for any person holding an elective office in this State, holding a seat in the General Assembly, or appointed to or employed in any of the offices or agencies of State government and who receives compensation for such employment in excess of 60% of the salary of the Governor of the State of Illinois, or who is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority, or who is the spouse or minor child of any such person to have or acquire any contract, or any direct pecuniary interest in any contract therein, whether for stationery, printing, paper, or any services, materials, or supplies, that will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois or in any contract of the Capital Development Board or the Illinois Toll Highway Authority.
 - (b) Interests. It is unlawful for any firm, partnership, association, or corporation, in which any person listed in subsection (a) is entitled to receive (i) more than 7 1/2% of the total distributable income or (ii) an amount in excess of the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein.

(30 ILCS 500/50-13)

3. Beth Bartolomucci's present salary, coupled with Thomas Bartolomucci's interest in Hanson, if Section 50-13(a) and/or (b) are applicable, would render contracts between Hanson and the State of Illinois, payable from funds appropriated by the General Assembly, unlawful in the absence of a Section 50-20 waiver provided by the Commission that exempts named individuals (in this case Beth and Thomas Bartolomucci Jr.) from the prohibitions of Section 50-13.
4. Section 50-20 of the Illinois Procurement Code provides:

Exemptions. The appropriate chief procurement officer may file a request with the Executive Ethics Commission to exempt named individuals from the prohibitions of Section 50-13 when, in his or her judgment, the public interest in having the individual in the service of the State outweighs the public policy evidenced in that Section. The Executive Ethics Commission may grant an exemption after a public hearing at which any person may present testimony. The chief procurement officer shall publish notice of the date, time, and location of the hearing in the online electronic Bulletin at least 14 days prior to the hearing and provide notice to the individual subject to the waiver and the Procurement Policy Board. The

Executive Ethics Commission shall also provide public notice of the date, time, and location of the hearing on its website. If the Commission grants an exemption, the exemption is effective only if it is filed with the Secretary of State and the Comptroller prior to the execution of any contract and includes a statement setting forth the name of the individual and all the pertinent facts that would make that Section applicable, setting forth the reason for the exemption, and declaring the individual exempted from that Section. Notice of each exemption shall be published in the Illinois Procurement Bulletin. A contract for which a waiver has been issued but has not been filed in accordance with this Section is voidable by the State. The changes to this Section made by this amendatory Act of the 96th General Assembly shall apply to exemptions granted on or after its effective date.

(30 ILCS 500/50-20)

5. The public policy evidenced in Section 50-13 of the Illinois Procurement Code is that State employees should not be in a position to influence the award of State contracts that inure to their direct benefit or the benefit of family members.
6. The public has an interest in having Beth Bartolomucci continue in the service of the State due to her years of public service and institutional knowledge. She is among few employees who have knowledge of certain computer programming languages needed to maintain systems operated by the Illinois State Police.
7. If Section 50-13 (a) and/or (b) apply in this case, then the public interest in having Beth Bartolomucci continue in the service of the State outweighs the public policy evidenced in Section 50-13 because:
 - a. There is no evidence that Mrs. Bartolomucci or Mr. Bartolomucci influenced or were in a position to influence the award of any of the contracts in question.
 - b. The event that triggered the conflict of interest provision in the Illinois Procurement Code (30 ILCS 500/50-13), was a salary increase provided pursuant to a collective bargaining agreement that was beyond Beth Bartolomucci's control.
 - c. Mr. Bartolomucci's ownership interest of 0.99% in Hanson is relatively small.
 - d. The CPOs testified that the contract awards were made pursuant to a fair bidding process and that the expense to the State to void and rebid these contracts would be significant.
8. In order for Section 50-13(a) alone to apply to the current case, the following additional requirements would exist:
 - a. Beth Bartolomucci, who is employed by the ISP, would need to "...receive compensation for such employment in excess of 60% of the salary of the Governor of the State of Illinois." and she or her spouse (Thomas Bartolomucci, Jr.) would also "...have or acquire any contract, or any direct pecuniary interest in any contract therein...."

- b. The requirements of Section 50-13(a) appear to be directly related to receiving a certain compensation level as an employee of the State of Illinois in combination with having or acquiring a contract directly with the State of Illinois.
9. While Beth Bartolomucci does receive compensation from the State of Illinois in excess of 60% of the salary of the Governor, neither Beth Bartolomucci nor Thomas Bartolomucci, Jr., "...have..." nor are they in the process of "...acquiring a contract directly with the State of Illinois that will be wholly or partially satisfied by the payment of funds appropriated by the General Assembly of the State of Illinois...." Since part (a) of Section 50-13 is directed toward prohibiting this type of combined interest, then as a result, Section 50-13(a) alone does not apply to this current case before the Commission.
10. In order for Section 50-13(b) alone to apply to the current case, the following additional requirements would exist:
 - a. Hanson would be a "...corporation, in which any person listed in Section 50-13(a) is entitled to receive (i) more than 7 1/2% of the total distributable income or (ii) an amount in excess of the salary of the Governor, to have or acquire any such contract or direct pecuniary interest therein" if Mr. Bartolomucci was entitled to receive either: more than 7 1/2 % of the total distributable income or an amount in excess of the salary of the Governor.
 - b. Beth Bartolomucci is a 'person listed in (Section 50-130 subsection (a))' which we have established above.
11. While Beth Bartolomucci does receive compensation from the State of Illinois in excess of 60% of the salary of the Governor and as a result is a person listed in subsection (a); it appears that Thomas Bartolomucci is not entitled receive an amount in excess of the salary of the Governor as distributable income.
12. Section 50-13(b) specifies that in order for it to be unlawful for any "...corporation to have or acquire any such contract or pecuniary interest therein" the person listed in subsection (a) (together with his or her spouse) must be "entitled to receive an amount in excess of the salary of the Governor as distributable income." Thomas Bartolomucci does not appear to be entitled to receive distributable income in excess of 60% of the salary of the Governor.
13. While Mr. Bartolomucci does have a stock ownership interest in Hanson, in an amount that exceeds 60% of the salary of the Governor, that ownership alone is not a direct pecuniary interest that entitles Mr. Bartolomucci to an amount of distributable income that exceeds either threshold above. As a result, we determine that the requirements of Section 50-13 are not triggered in this case since there is not the minimum percentage or amount of distributable income necessary to trigger its application.

WHEREFORE, for the foregoing reasons, the Commission has determined that the requirements of 30 ILCS 500/50-13 are not triggered in this case and the statutory conflicts of interest described therein do not apply to the case before us concerning the interests of Beth Bartolomucci, Thomas Bartolomucci and Hanson regarding her employment and the contracts

that Hanson currently has or is seeking from the various agencies and or universities of the State of Illinois.

Notwithstanding the foregoing, and to the extent that a determination was made that the specific requirements of Section 50-13 of the Illinois Procurement Code concerning distributable income would have applied to this case, our review of all of the facts and evidence presented in to the Commission shows there to be no evidence that there was or is an actual conflict of interest as a result of the actions or inactions of Beth Bartolomucci, Thomas Bartolomucci and Hanson. As a result, the Commission would have granted the requested exemption/waiver had it been necessary to do so in this case with respect to the current and pending contracts identified in the requests for exemption filed by the four CPOs.

SO ORDERED:

The Executive Ethics Commission:

By:

A handwritten signature in black ink, appearing to read "Chad D. Fornoff", is written over a horizontal line.

Chad D. Fornoff
Executive Director